

1
2
3
4
5
6
7
8
9
10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA
12

13 UNITED STATES OF AMERICA,) 3:00-cr-00058-HDM-RAM
14 Plaintiff,)
15 vs.) ORDER
16 HUMBERTO MAGANA ARIAS,)
17 Defendant.)
18 _____)

19 Pro-se defendant, Humberto Magana Arias, has filed a request
20 for production of documents as an indigent pro-se defendant [Docket
21 No. 250]. No response was filed by the government and the time for
22 doing so has passed.

23 The defendant requests the court provide him with the trial
24 transcripts, status hearing transcripts, sentencing transcripts,
25 and a complete copy of the record in this case, 3:00-cr-0058-HDM-
26 RAM. He contends these documents are necessary for him to further
27 litigate his case, specifically, to prepare a habeas corpus
28 petition contesting his conviction and sentence.

1 The defendant has filed numerous motions contesting his
2 conviction and sentence. On January 10, 2006, he filed a petition
3 for a review of sentence [Docket No. 152] that was denied on March
4 1, 2006 [Docket No. 158]. On July 3, 2006, he filed a 2255 motion
5 to vacate his sentence [Docket No. 159] that was denied on October
6 26, 2006 [Docket No. 167]. On January 16, 2008, he filed a "motion
7 to dismiss indictment because United States District Court lacked
8 jurisdiction to try this case" [Docket No. 178] that was denied on
9 February 26, 2008 [Docket No. 182]. On February 21, 2008, he filed
10 a second 2255 motion to vacate [Docket No. 181] that was denied on
11 November 14, 2008 [Docket No. 215]. There is no indication in the
12 defendant's current motion [Docket No. 250] or based on the record
13 before the court that the defendant does not have the requested
14 material already.

15 In addition, the defendant has not yet filed his habeas corpus
16 petition. 28 U.S.C. § 753(f) provides:

17 Fees for transcripts furnished in proceedings brought
18 under section 2255 of this title to persons permitted to
19 sue or appeal in forma pauperis shall be paid by the
20 United States out of money appropriated for that purpose
21 if the trial judge or a circuit judge certifies that the
22 suit or appeal is not frivolous and that the transcript
23 is needed to decide the issue presented by the suit or
24 appeal.

25 Section 753(f) does not authorize the court to order payment for
26 transcripts if the defendant has not yet filed a habeas petition.
27 *See United States v. MacCollom*, 426 U.S. 317, 321 (1976); *see also*
28 *U.S. v. Olsen*, 988 F.2d 124 (9th Cir. 1993). To obtain

1 transcripts, the defendant first must file a habeas petition.
2 After he files a habeas petition, the court will decide whether he
3 has also met the other conditions for obtaining transcripts at
4 government expense under 28 U.S.C. § 753(f).

5 Based on the foregoing, the court concludes that the defendant
6 is not entitled to transcripts free of cost or to a complete copy
7 of the record in this case. Defendant's request for production of
8 documents as an indigent pro-se defendant is DENIED without
9 prejudice to renew should he file a habeas corpus petition. *U.S. v.*
10 *Connors*, 904 F.2d 535 (9th Cir. 1990).

11 **IT IS SO ORDERED.**

12 DATED: This 3rd day of February, 2011.

13
14 
15 UNITED STATES DISTRICT JUDGE
16
17
18
19
20
21
22
23
24
25
26
27
28